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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,033	07/10/2001	Jeffrey Boulter	85804-019501 (01-9774)	9894

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EXAMINER	
LEZAK, ARRIENNE M	
ART UNIT	**PAPER NUMBER**
2143	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/903,033	BOULTER ET AL.	
	Examiner	Art Unit	
	Arrienne M. Lezak	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-42 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-42 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Examiner notes that Claims 1-42 have been amended, and no Claims have been cancelled or added. Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 11 October 2005 as reiterated herein below.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 3, 6, 9, 14, 17, 22, 25, 28, 31, 34, 37 & 41 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for determining characteristics of first community members' preferences, does not reasonably provide enablement for evaluating preferences of a second community in order to determine a first community from said second community. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to create the invention commensurate in scope with these claims. Specifically, Examiner finds that a second community, inherently and by its nature, cannot in any way exist without a first community. Thus, a first community cannot in any way ever be determined from a second community. Examiner is further confused as to what represents a first community and what represents a second community, as the claim language is very confusing and ambiguous. Proper correction is required.

3. For examination purposes, Examiner looks to the specification to note that a category/genre, (i.e.: country music), will be read to represent a second community wherein an sub-category/artist, (i.e.: Hank Williams), will be read to represent a more narrow first community, and wherein user ratings of the artist and/or artist repertoire will be read to determine and re-determine said respective genre and artist communities accordingly.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> **The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.**

5. Examiner notes that the rejection of Claims 12 & 20 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, has been overcome by Applicant's amendment to the claim language. Thus, rejection of Claims 12 & 20 under 35 U.S.C. 112 has been withdrawn.

6. Claims 3, 6, 9, 14, 17, 22, 25, 28, 31, 34, 37 & 41, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, Examiner finds that a second community, inherently and by its nature, cannot in any way exist without a first community. Thus, a first community cannot in any way ever be determined from a second community. Examiner is further confused as to what represents a first community and what represents a second community, as the claim language is very confusing and ambiguous. Proper correction is required.

7. For examination purposes, Examiner looks to the specification to note that a category/genre, (i.e.: country music), will be read to represent a second community wherein an sub-category/artist, (i.e.: Hank Williams), will be read to represent a more narrow first community, and wherein user ratings of the artist and/or artist repertoire will be read to determine and re-determine said respective genre and artist communities accordingly.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent US 6,192,340 B1 to Abecassis in view of US Patent 5,926,207 to Vaughan. Examiner further includes the teachings of MusicMatch Jukebox and RealJukebox as incorporated within the Abecassis patent, (Abecassis – Col. 4, lines 30-65), and as taught by the non-patent literature provided with this office action.

Regarding Claims 1-3, 6-9, 11-17, 19-25, 27-31, 33-37, 39 & 41, Abecassis discloses a system, method and computer readable medium for providing transmission of a data stream according to preferences of a community, (Abstract; Col. 4, lines 30-65; & Col. 5, lines 1-19), the steps comprising:

- providing a first community, said first community being self-defining by means of shared preferences, (Col. 2, lines 1-67; Col. 3, lines 1-64; Col. 17, lines 45-67; & Col. 18), said first community expressing first preferences regarding content in first data streams arising from a first music-related database including songs and/or music videos, (Col. 2, lines 36-67; Col. 3, lines 1-22; Col. 5, lines 20-24; Col. 15, lines 20-62; Col. 16, lines 47-67), (Examiner notes that the use of "channels" or "stations" was well-known at the time of invention by Applicant, as used by both RealJukebox and MusicMatch Jukebox. Additionally, the creation of personal virtual radio stations was also well-known as taught by the Lumelsky '672 art not relied upon, noted herein below);
- determining characteristics of said first preferences with regard to said first data streams to provide determined characteristics, (Col. 15, lines 27-67 & Col. 16, lines 47-60);
- receiving preferences from a first user, (per pending Claims 15 & 22) (Col. 16, lines 19-21);
- biasing an individual data stream arising from said first music-related database according to said determined characteristics and according to said preferences of said first user so that said individual data stream is biased for positive first preferences of said first community and biased against negative first preferences of said first community, (per pending Claims 2, 8, 16, 24, 30 & 36), and so that said individual data stream is

biased according to said preferences of said first user, (per pending Claims 15 & 22), (Col. 17, lines 46-67 & Col. 18);

- transmitting said individual data stream to said first user, including content highly rated by said first user according to said preferences of said first user, (per pending Claims 15 & 22), said individual data stream transmitted on a voluntary or selectable basis to allow said first user to receive said individual data stream on a voluntary or selectable basis, (per pending Claims 5, 11, 19, 27, 33 & 39), (Col. 17, lines 66-67 & Col. 18, lines 1-45); and
- said individual data stream has more content that said community likes and less content that said community dislikes without resort to analysis of said content in said data stream and wherein said first user receives content rated highly by said user, (Col. 17, lines 66-67 & Col. 18, lines 1-45), (Examiner notes that the preference indication functionality clearly and obviously provides for preferred content. Additionally, once preferences are indicated, the radio-on-demand functionality is designed to automatically produce a continuous playing of highly rated audio responsive to pre-established preferences without user intervention/analysis.)

10. Thus, Examiner notes that Abecassis in light of MusicMatch Jukebox and RealJukebox teaches a Radio-on-demand functionality with numerous user-selectable radio stations in addition to the ability to set user preferences and transmit user-

preferred programming wherein any number of users would obviously choose from the available radio-on-demand stations, thus forming a community of individuals with similar musical preferences. Additionally, Examiner notes that sub-categories clearly and obviously exist within the channel/station preferences, (i.e.: classical category, all-mozart channel sub-category), (Abecassis – Col. 15, lines 27-44).

11. That noted, a second category obviously reads upon providing a second community, (i.e.: country category, all-hank Williams channel sub-category), said second community expressing second preferences regarding content in second data streams arising from said first music-related database wherein anyone choosing said category as a preference causes the evaluation of said second preferences of said second community.

12. Additionally, all persons choosing the same sub-category would clearly and obviously read upon determining said first community from said second community by means of said second preferences with members of said first community having a first preference in common, so that said first community arises from a larger second community, said first community determined by having a first preference in common, (per pending Claims 3, 9, 17, 25, 31 & 37). As noted herein, for examination purposes, Examiner looks to the specification to note that a category/genre, (i.e.: country music), will be read to represent a second community wherein an sub-category/artist, (i.e.: Hank Williams), will be read to represent a more narrow first community, and wherein user ratings of the artist and/or artist repertoire will be read to determine and re-determine said respective genre and artist communities accordingly.

13. Finally, Abecassis further teaches the analysis of the requirements of a plurality of users, to allocate data that more closely matches the interests of the users, (Abecassis – Col. 17, lines 46-49), wherein repeated analysis of user preferences will clearly and obviously re-establish said first community, re-establish said expressed preferences, and re-bias said individual data stream, enabling both said first community and said determined characteristics to change over time according to, respectively, said second expressed preferences of said second community and said first expressed preferences of said first community, (per pending Claims 7, 14, 22, 23, 28, 29, 34, 35 & 41). Examiner further notes that repeated analysis of user preferences would obviously occur each time a user uses the radio-on-demand, as further noted by the "listening" functionality, (Abecassis – Col. 18, lines 55-67).

14. Thus, though Examiner finds that Abecassis clearly and obviously reads upon Applicant's claims language, Examiner notes that the specific notation of categories/2nd communities and sub-categories/1st communities is not enumerated, and therefore Examiner provides the Vaughan reference. Vaughan teaches a database containing a master list of broadcast channels selectively programmable to define broadcast channel behavior independently of other broadcast channels, (Col. 2, lines 5-44 & Claims 1-28), wherein a user can further designate sub-lists comprising a filtering functionality. It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to combine the category/sub-category of Vaughan with the Abecassis user-preference transmission method as Abecassis clearly teaches the analysis of the interests of a plurality of users to more closely match said users interests, (Abecassis –

Col. 17, lines 46-49), and Vaughan clearly teaches the need to limit desired functionalities such that they are individually customized and associated with a particular broadcast channel per user(s) preference, (Vaughan – Col. 1, lines 61-67 & Col. 2, lines 1-2). In other words, the combination further defines user interest and preference as it pertains to broadcast data. Thus, Claims 1-3, 6-9, 11-17, 19-25, 27-31, 33-37, 39 & 41 are found to be unpatentable over the combined teachings of Abecassis, (Real Jukebox and MusicMatch Jukebox) and Vaughan.

15. Regarding Claims 4, 10, 18, 26, 32 & 38, the combined teachings of Abecassis, (Real Jukebox and MusicMatch Jukebox) and Vaughan are relied upon as noted herein above. Abecassis further teaches biasing said individual data stream so that it complies with the DMCA. Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein conformance with applicable copyright law is well-known and thus inherently applies to all transmitted data streams wherever and whenever they occur, to whomever they are displayed and for whatever they contain. Thus, as Abecassis teaches the transmission of content generally, copyright law is inherently relevant and applicable to the same. Thus, Claims 4, 10, 18, 26, 32 & 38 are found to be unpatentable over the combined teachings of Abecassis, (Real Jukebox and MusicMatch Jukebox) and Vaughan.

16. Regarding Claims 40 & 42, the combined teachings of Abecassis, (Real Jukebox and MusicMatch Jukebox) and Vaughan are relied upon as noted herein above. Abecassis further teaches said server being in said first location and at least one of said users being in a second location, said second location being a different country than

said first location, (Col. 5, lines 20-24). Examiner notes that remote sources obviously include any source remote to the user, including, but not limited to a source in another country. Specifically, as Abecassis, RealJukebox and Musicmatch Jukebox teach radio-on-demand, said radio-on-demand would obviously include broadcast transmissions from any broadcasting source, which sources are well-known to be both national and international. Thus, Claims 40 & 42 are found to be unpatentable over the combined teachings of Abecassis, (Real Jukebox and MusicMatch Jukebox) and Vaughan.

Response to Arguments

17. Applicant's arguments filed 11 January 2006, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

18. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Moreover, Examiner notes that all claim limitations, (including data stream rating via user preference), are rendered obvious over the combined teachings of Vaughn and

Abecassis. Thus, this obviousness-type rejection succeeds, as the cited references in combination do indeed have all the elements recited in Applicant's claims, (and as noted herein), and moreover, the motivation to combine the same is both extremely strong and clearly predates Applicant's application.

19. Regarding Applicant's argument that the prior art does not teach real-time broadcast, Examiner respectfully disagrees again noting that the prior art specifically and clearly incorporates the teachings of RealJukebox and MusicMatch Jukebox, (Col. 4, lines 30-65), in addition to a radio-on-demand functionality, (Col. 11, lines 1-44). Additionally, Examiner again notes that regardless of a user's music collection, the radio-on-demand feature, (taught by Abecassis – Col. 11, lines 31-44), in combination with the teachings of RealJukebox and MusicMatch Jukebox, clearly and obviously teach Applicant's claimed invention in it's entirety.

20. Regarding Applicant's argument that categories of music do not read on communities of music, Examiner respectfully disagrees. Specifically, Examiner makes reference to Applicant's own specification, (pp. 7-13), wherein Applicant states, "it is yet another object of the present invention to provide a community biased music data stream according to a community expressing preferences for music carried by said data stream, such as artist or genre". Thus, Examiner maintains that a category of music, (i.e.: Mozart or classical music), clearly and obviously reads upon a community comprised of listeners who prefer the respective classical music artist or genre.

21. Thus, as Examiner has completely addressed Applicant's amendment, and finding Applicant's arguments do not show how reconsideration avoids such references or objections, Examiner hereby rejects all claims in their entirety as noted herein above.

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent US 6,246,672 B1 to Lumelsky;

RealNetworks archived webpages;

Musicmatch archived webpages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak
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